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GNR-E-02-01

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UTILITIES COMMISSION

BILL ARKOOSH
2005 US HIGHWAY 26
GOODING, IDAHO 83330

March 12, 2002

Commission Secretary
Idaho Public Utilities Commission
Post Office Box 83720
472 West Washington Street
Boise, Idaho 83720-0074

Re: IN THE MATTER OF THE INVESTIGATION OF THE CONTINUED REASONABLENESS OF CURRENT SIZE LIMITATIONS FOR PURPA OF PUBLISHED RATE ELIGIBILITY (i.e., 1 MW) AND RESTRICTIONS ON CONTACT LENGTH (i.e., 5 YEARS)
Case No. GNR-E-02-01

Dear Sir or Madam:

Congress insisted in passing PURPA that the state public utility commissions overcome traditional utilities' monopolistic reluctance to buy cogenerated and small hydro power by requiring the purchase of this power at rates, terms and conditions that leaves the consumer indifferent to whether the power came from the utility or qualified facility ("QF"). Congress sought, in part, to accomplish this purpose by requiring that the utilities purchase QF power at the same marginal price that the utilities paid for power and capacity elsewhere. By thus "avoiding the cost," of the marginal unit of power, it could be offered to the consumer at exactly the same rate regardless of whether the power originated with the traditional utility or the QF.

Congress intentionally meant to foster the QF industry by insisting QF's had a right of first opportunity to provide the marginal unit of power at the marginal rate. Understanding, however, that the QF industry could not invest capital to be ready to transmit the marginal unit of power when the price provided the incentive to exercise the right of first opportunity, Congress extended the marginal cost concept to added capacity, and further insisted that the state commissions provide realistic terms and conditions that would protect the small producer from the traditional utilities refusal to deal.

Although every participant in all this Commission's QF cases understands and mouths these concepts, we have not implemented them. Instead, for whatever reasons, we offer QF's under one megawatt a contract term of only 5 years at a rate less than that consistently awarded to local utilities to add on the marginal unit. Not only does the term prevent realistic commercial financing, thus violating the mandate to provide incentive terms, but the low rate provides a disincentive instead of the required incentive. Anything over one megawatt imprisons the QF in the pre-PURPA wilderness of seeking terms and rates from the same utility it seeks to displace.

The proof has resided very much in the pudding. The utilities tell the Commission they do not intend to build, so the marginal cost of the unwanted marginal unit sinks to nearly zero. The QF industry withers without an offer of a fair price. Suddenly, demand in the area of service magically grows, and the utilities approach the Commission for permission to obtain more capacity and power. The approach seems always in a vacuum, isolated from the question of obtaining the power from QF's, except to note that no QF's are up and running to meet this new and desperate need. And the approach always comes in a hurry.

To some of the participants in the QF industry, the solution seems exceedingly simple. We in Idaho should do as Congress intended and give the QF's the right of first opportunity to sell the marginal unit at the marginal cost by providing terms and conditions which assure the public that before the traditional utility be allowed to provide the marginal units of capacity and power, they have offered the opportunity to Idaho's public. Those terms and conditions would require that a precondition to any new acquisition be tied to the *realistic*, rather than the induced, absence of QF power. In order for the utility to show a realistic absence of QF power, it would be required to show that it had *timely* offered QF's the opportunity to displace the power or capacity the utility seeks to put on line at the same rate the utility seeks upon bankable terms.

What does this mean in practical terms? It means that a condition precedent to any utility building or purchases would be a showing on the part of the utility it has in place a program offering the true avoided cost of energy and capacity upon terms and conditions that realistically allow construction in Idaho's commercial and banking climate. This would require, at the least, that the avoided cost must be calculated and offered for a period acceptable to the banking community for purposes of financing, which appears to be at least twenty years.

What does this do? This approach would marry the utilities need to acquire marginal capacity and electricity to the QF's mandated right of first opportunity. It would open up the vacuum that now allows the utility to reject the need for any long term power or planning on Monday, and be at the Commission's door by Friday with a hand out for permission to engage in incremental growth. If on Friday, the Commission required the utility to prove it had *timely* offered *realistic* terms and conditions to the QF industry, the Commission would not only find that the QF's would have been building on Monday, but that the growth of power supply in this state would be constant, incremental, and controlled by the realistic demands of a free market place rather than artificial, and artificially false, planning.

What are the benefits? The utilities would necessarily do authentic long term planning. The necessity of incremental power or capacity would only arise when the QF industry had not stepped up to the plate. The QF industry would not have exercised its right of first opportunity, if *timely* offered *realistic* terms to accept the avoided cost rates only if the offer had not been timely, the terms realistic, or the rate unacceptable. If the Commission finds that the offers had been untimely to build, or the terms unrealistic to attract commercial endeavor, it would require adjustment at the time. If the Commission found that the avoided cost rates offered were unacceptable because they were below what the utility would pay itself for the power, the Commission would require the utility pay the real avoided cost rate. If the Commission found that the avoided cost rate were unacceptable to the QF industry because it resided below the cost of production, the Commission would have a gem of a planning opportunity to timely learn whether over the long term such a condition would be expected to continue. By putting the monkey on the utilities' backs to prove they are not evading their responsibilities to Idaho's public under PURPA, they must prove realistic planning or explain why.

By marrying the terms and rates offered to QF's to the real world needs for power and financing, and only through this marriage, will Idaho ever benefit from PURPA. If we continue the starts and jerks of utility reluctance of offer out part of the production pie until, under essentially emergency conditions, utilities must find power elsewhere, we not only miss a stellar opportunity to build Idaho's infrastructure through market forces, but we actually cost the ratepayer through bad planning. It is ironic that while trying to evade purchasing power from QF's through hocus planning and the false polemic that avoided cost pricing is a "subsidy" to QF's, the utilities have really upped costs to the rate payers.

Sincerely

Bill Arkoosh

Bill Arkoosh

/BA

cc: Avista Corporation
PacifiCorp
Utah Power & Light
Idaho Power Company
Governor Kempthorne
Senator Robert Lee
Representative Bert Stevenson